

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0111P

Sales and Use Tax

Calendar Years 1995, 1996, 1997, and partial year ended 8/30/98

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is headquartered out of state and has several business locations in Indiana. The taxpayer provides intrastate and interstate telecommunications services. At audit, it was determined that the taxpayer deducted the collection allowance from the sales tax collected and remitted the balance to the Department. 45 IAC 2.2-6-16 does not allow public utilities the collection allowance. Taxpayer made several other errors in its sales tax reporting. Taxpayer failed to keep accurate records of its purchases and the payment of use tax, therefore a projection was utilized. The audit also included a claim for refund that the audit allowed in part. Taxpayer was given credit in the audit for items it erroneously self-assessed use tax.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the deficiency was due to reasonable cause.

Taxpayer further states that (1) it consistently filed its Indiana sales and use tax returns on time, (2) this is the first sales and use tax assessment issued against it so there is no history of prior deficiencies, and (3) the amount of the tax assessment is small relative to the amount of tax paid to Indiana.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use

such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer failed to remit sales tax on approximately thirty percent (30%) of its taxable sales for the audit period. The amount of use tax not remitted was minimal because the department included a claim for refund in the audit for items the taxpayer erroneously remitted use tax upon. Taxpayer made other errors and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.